Criminal Appeal No. 198-DB of 1998 and
Criminal Appeal No. 426-DB of 1998

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Appeal No. 198-DB of 1998

Raj Pal **...**Appellant

VERSUS

State of Haryana **...**Respondent

Criminal Appeal No. 426-DB of 1998

Balbir **...**Appellant

VERSUS

State of Haryana **...**Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLR MR. JUSTICE MOHINDER PAL.

Criminal Appeal No. 198-DB of 1998 and
Criminal Appeal No. 426-DB of 1998

Present: Mr.Vinod Ghai, Advocate,
fir the appellants.

Mr. S.S. Goripuria, Deputy Advocate General, Haryana.

Mr.Rahul Vats, Advocate
for the complainant.

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MOHINDER PAL, J.

This judgment will dispose of afore-mentioned two Criminal Appeals filed by appellants Raj Pal and Balbir as they are directed against the common judgment of conviction dated March 05, 1998 and sentence order dated March 10, 1998, passed by the learned Sessions Judge, Bhiwani. Both the appellants were convicted under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as `the Code') and sentenced to undergo imprisonment for life.

2. This case was registered on the basis of statement of Mahender Singh (complainant-P.W.6) made by him on December 30, 1995, before Sub Inspector Ran Singh (P.W.12), who at that time was posted as Assistant Sub Inspector/ Station House Officer of Police Station Badhra. As per his statement, they were four brothers. He was the youngest and Suresh, deceased (hereinafter referred to as `the deceased') was the eldest. He along with the deceased and his mother lived jointly in a house constructed in the fields. Fields of appellant

Raj Pal adjoined their fields and he was also living in the house constructed in the fields. About two/three months prior to the occurrence, an altercation had taken place between appellant Raj Pal and the complainant-party over the `Mial' (ridge), which was got compromised by the relatives. On December 29, 1995, in the evening, there had been an exchange of hot words between appellant Raj Pal and the deceased over the aforesaid ridge. On that account, appellant Raj Pal had been nursing a grudge. On the night of December 29, 1995, the complainant along with his mother Ram Ratti and sisters Guddi and Phool Pati were taking rest in their house after taking meals and the deceased had gone to the `Kotha' adjoining their house for sleeping there. Wife of the deceased had gone to her Village Talu. At about 10.30 P.M, they heard the noise of the deceased from the adjoining `Kotha'. Lights of their house were on at that time. On hearing the noise, the complainant, his mother Ram Ratti and sister Guddi came out from the house and went towards the room of the deceased. They saw that appellant Balbir was pouncing upon the deceased on the cot and he was armed with a `Kulhari' (axe). Appellant Balbir is relative of Jug Lal, grand father of appellant Raj Pal and was working as a `Sanjhi' (share-cropper). Appellant Raj Pal was having a `Pharsa' in his hand and he gave a `Pharsa' blow on the frontal portion of the neck of the deceased, who was lying on the cot. Then appellant Balbir inflicted an axe blow to the

deceased, which hit him on the left hand below the elbow. The complainant- party tried to apprehend the assailants, but in vain. They fled away from the spot with their weapons. After leaving his mother and sister near Suresh, the complainant went to the village to call his brother Sita Ram and cousin Sube, who came to the spot. Thereafter, Suresh was brought to the village by putting him in a tractor, from where he was taken to General Hospital at Bhiwani by arranging a four-wheeler. He was admitted in the hospital. After some time, Suresh succumbed to his injuries.

3. After completion of investigation, challan was presented against the accused.

4. Charge against both the accused was framed under Section 302 read with Section 34 of the Code. They did not plead guilty to the charge and claimed trial.

5. At the trial, the prosecution examined Vijay Jain, Draftsman (P.W.1), Surender Singh, Photographer (P.W.2), Pawan Kumar, Photographer (P.W.3), Dr.A.S. Gupta, Medical Officer, General Hospital, Bhiwani (P.W.4), Dr. P.K. Charaya, Medical Officer, General Hospital, Bhiwani (P.W.5), Mahender Singh, complainant, (P.W.6), Guddi, eye witness (P.W.7), Manphool (P.W.8), Suraj Bhan (P.W.9), Sumer Singh (P.W.10), Parkash (P.W.11), Ran Singh, Sub Inspector (P.W.12) and Ram Dhan, Sub Inspector (P.W.13).

6. Statements of the accused were thereafter recorded

under Section 313 of the Code of Criminal Procedure, in which they denied the prosecution allegations and pleaded false implication. Accused Raj Pal further stated that he was a student of + 2 at the time of occurrence and used to study in a different village. Accused Balbir is not related to him in any manner and he was not their share-cropper at any point of time. There is a `Kacha' path leading to Village Mandhi, in between their fields and the fields of the complainant – party. So, there was no question of any quarrel over the `Mial' (ridge). He was in illegal custody of the police. He never made any disclosure statement and never got recovered the weapon in question. In fact, this was a blind murder and no witness had witnessed the occurrence. The witnesses, who have appeared in this case, were introduced later on and some of them are inimical towards him. The witnesses have improved their version from stage to stage. The police has fabricated the documents in this case. Accused Balbir stated that he is not related to accused Raj Pal. He used to reside in his village and was not share-cropper of accused Raj Pal. The accused also examined Jai Singh (D.W.1), Neki Ram (D.W.2) and Ashok Kumar (D.W.3) in their defence.

7. We have heard the learned counsel for the parties and have gone through the records of the case. Mr.Narutam Kaushal, Advocate, was appointed as an amicus curiae to defend appellant Balbir, who had filed his appeal through jail. However, he did not appear. On our asking, Mr. Vinod Ghai, Advocate,

who is representing appellant Raj Pal, also addressed arguments on behalf of appellant Balbir. We have also heard Mr.S.S. Goripuria, learned Deputy Advocate General, representing the State of Haryana and Mr. Rahul Vats, learned counsel appearing for the complainant.

8. Learned counsel for the appellants has contended that there was no motive for the accused to cause injuries to the deceased as there was no independent corroboration to the fact regarding `Mial' (ridge). While referring to the medical evidence, it was argued that presence of the witnesses at the place of occurrence was doubtful as the witnesses have given account of two injuries whereas in the medical evidence four injuries have been recorded by the Doctor. According to him, the fact regarding emergency lights, mother of the deceased carrying a torch and moonlit -night has been concocted as there was delay in the lodging of First Information Report, which has been used to implicate the accused. He further argued that there was no reason for the brother of the deceased to take him in an injured condition to the village instead of taking him to the hospital and, in this process, the presence of Mahender Singh (P.W.6), the alleged eye witness at the place of occurrence, was doubtful. He also argued that the fact regarding murder of the deceased was already in the knowledge of the police as Photographer had reached the place of occurrence at 9.10 A.M and the First Information Report had been recorded at a later stage.

He also raised a suspicion regarding presence of Guddi (P.W.7) at the spot as she was married about thirteen years ago and was residing at a difference place. Finally, it has been argued that the trial Court has wrongly relied upon the writing Exhibit P.21 written by the deceased in the note book after the occurrence as nothing had been said in the First Information Report regarding this writing. This note book had been handed over by the mother of the deceased Smt. Ram Ratti, who has not been examined, and there was no independent corroboration to the fact that earlier some compromise had been written by the deceased, which had been used as his standard writing to compare the writing on the note book.

9. In this case, the ocular version has been proved by the eye-witnesses, namely, Mahender Singh (P.W.6) and Guddi (P.W.7). Both these witnesses are consistent on the point that prior to the occurrence, there was a dispute between the deceased and accused Raj Pal over `Mial', but the same was settled with the intervention of relations and the villagers. On December 29, 1995, once again a quarrel had taken place between these two persons and at about 10.30 P.M when both Mahender Singh and Guddi were resting in the adjoining room, they heard noise from the side of the room of the deceased. Both of them went to the place of occurrence and at that time their mother also accompanied them, who was having a torch in her hand and emergency lights were also on in the room of the

deceased. In their presence, accused Raj Pal, who was armed with a `Pharsa' and accused Balbir, who was armed with an axe, caused injuries to the deceased. Accused Raj Pal gave a `Pharsa' blow on the neck of the deceased and accused Balbir gave an axe blow from its blunt side which hit below the left elbow of the deceased. Both the witnesses tried to catch hold of the accused, but they ran away towards the fields. Mother and sister of the deceased were left to guard the victim while Mahender Singh went to call his elder brother Sita Ram and his cousin Sube Singh. With the help of both these persons, the injured was taken on a tractor to the village, which was situated at a distance of about 5 kilometers. From the village, a four-wheeler was arranged and the injured was taken to General Hospital, Bhiwani, where he succumbed to his injuries. Both these witnesses were put to a lengthy cross-examination, but nothing substantial could be extracted from it.

10. The contention of the learned counsel for the appellants on the point of motive cannot be given importance as motive is *sine qua non* for success of a case. It has come in the evidence of Mahender Singh (P.W.6) and Guddi (P.W.7) that there is about 5-1/2 feet path which bifurcates the fields of the complainant-party from the fields of accused Raj Pal. Once it is established that the fields of the accused and the complainant are adjoining each other, whether the same are bifurcated by a `Mial' (ridge) or a path is of no consequence. Otherwise also,

the witnesses are consistent on the point that before the present occurrence, there was a dispute between the parties on account of `Mial'.

11. So far as the argument of the learned counsel for the appellant that the presence of the witnesses at the place of occurrence was doubtful as they were unable to explain two of the four injuries found on the dead body of Suresh is concerned, it may be mentioned that the witnesses were attracted to the scene after hearing `raula' and the accused might be in the process of inflicting injuries when they had reached and only two injuries had been caused in their presence. Moreover, from the statement of Dr. P.K. Charaya (P.W.5), who had conducted post mortem examination on the dead body of Suresh, it is apparent that almost whole of the neck of the deceased had been chopped off. He had observed following four injuries:-

> " 1. A 2 inches x 1-1/2 inches incised elliptical wound on the anterior surface of the neck below the mandible and above the thyroid cartilage. The wound was bone deep, with anterior surface of the vertebral column visible, with a superficial cut mark, in the bone anteriorily. Trachea, oesophagus, large vessels of the neck were cut and muscles of the neck cut and all these structures were retracted superiorily and inferiorily.
>
> 2. An incised wound at the junction of the

lateral 1/3rd and medial 2/3rd of the right clavicle was present. Size of the wound 1.5 cm x 1 cm x 1 cm. Corresponding cut was present in shirt and `baniyan' of the deceased.

3. A 3 cm x 5 cm abrasion was present on the anterior surface of right shoulder. Corresponding tear was present in the shirt and `baniyan'.

4. A contusion 3 x 2.5 cm over the back of the left forearm. In its upper part below the elbow."

12. Dr. A.S. Gupta (P.W.4), who had examined Suresh when he was unconscious and in an injured condition, had observed the following two injuries on his person:-

"1. There was an incised wound, 8 cm x 3 cm x muscle deep (sternocleadu mastoid muscle) was exposed (of both sides). Trachea was also exposed. Wound was transverse. I advised X-ray neck and surgeon's opinion. There was clotted blood present over the wound.

2. A contusion 3 cm x 3.5 cm present over left forearm, 4 cm below to left elbow. For this injury, I advised X-ray left forearm."

Dr.A.S. Gupta (P.W.4) explained that after seeing the condition of the patient and because the patient was unconscious, he was more concerned about the treatment in

order to save the life of the injured at that time. So, injuries might have escaped his notice. Otherwise also, injuries Nos.3 and 4 observed by Dr.P.K. Charaya (P.W.5) at the time of conducting post mortem examination are abrasion and contusion, which were not serious in nature. Once it has come in the evidence of the doctor that injuries Nos. 1 and 2 were fatal and could not be self-suffered, the argument regarding non-mentioning of two minor injuries by the doctor is of little importance in this case.

13. Now coming to the argument of the learned counsel for the appellant that the injured should have been taken to the hospital on tractor rather than going to the village and arranging for a four-wheeler, we are unable to agree with this contention simply for the reason that there is no shock absorption in the tractor trolley and seeing the condition of the injured he was required to be shifted to the hospital in a comfortable position. In this view of the matter, there was no delay in taking the injured to the hospital.

14. The presence of Guddi (P.W.7) in the house of her brother is also not unnatural as the occurrence had taken place on December 29, 1995. In the last week of December, there are holidays for the students etc. and it is quite possible that she had come to meet her parents during this period and was present at the place of occurrence. Otherwise also, the house of the deceased and Mahender Singh (P.W.6) was consisted of six / seven rooms which might have been used as a dwelling place for

the other family members.

15. Regarding the writing on the note book (Exhibit P.21) written by the deceased after the occurrence, it may be mentioned that Dr.A.S.Gupta (P.W.4) explained that possibility of injured Suresh to speak and write a few words immediately after receipt of injuries cannot be ruled out. In this view of the matter, we find nothing wrong in the finding returned by the learned Sessions Judge that considering the ocular testimony available in the form of evidence of Mahender Singh (P.W.6) and Guddi (P.W.7), it would not be necessary to consider as to what Suresh deceased wanted to say when he wrote the disputed writing on the note-book Exhibit P.21. It has also come in the evidence of Guddi (P.W.7) that said writing was written by Suresh deceased himself after the occurrence.

16. In view of the aforesaid discussion, we do not find any merit in this appeal and dismiss the same.

(ASHUTOSH MOHUNTA)
JUDGE

(MOHINDER PAL)
JUDGE

November 23, 2007.
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